

From: BOBA28@aol.com@inetgw
To: Microsoft ATR
Date: 12/31/01 9:30pm
Subject: Independent Institute in Oakland

Attached is a piece that I recently received from the Independent Institute in Oakland. They make some good points that you should consider in your settlement with Microsoft.

Attachment:

STATES' PERSECUTION OF MICROSOFT: Throwing Bad Money after Good

Because government bureaucrats don't bear the costs of their actions directly, governments are especially bad at not knowing when to stop throwing bad money after good. The Microsoft antitrust case clearly illustrates this truism of government pathology.

Although the U.S. Court of Appeals discarded the guts of the government's antitrust suit against Microsoft last June, nine states -- led by California and New York -- have chosen to keep fighting Microsoft. And although the federal antitrust trial uncovered no proof that consumer welfare was harmed by Microsoft's fiercely competitive behavior, the nine states perpetuate the pretense that they are pursuing Microsoft for the sake of consumers rather than Microsoft's rivals.

As Dominick Armentano put it in a recent op-ed:

"The first trial produced not one shred of evidence Microsoft's software licensing or browser integration resulted in any consumer injury; the new trial will be similarly cursed. Instead, the testimony will confirm Microsoft plays competitive hardball (who doesn't?) and intends to take market share from competitors with new innovation, savvy marketing and low prices."

"But that kind of behavior (engaged in by all free market firms) is the very nature of the competitive process and should be applauded, not condemned. Yet the holdout states and their politically ambitious attorneys general falsely believe antitrust laws exist to preserve specific competitors or specific products and that government must constantly level the playing field or micro-manage inter-firm business dealings with antitrust litigation. So the states will put the competitors on the stand and let them whine.

"Consumers (and businesses) in all states require government protection from force and fraud but they don't require decade-long antitrust assaults on firms that innovate and lower prices to consumers. Such assaults are economically inefficient, create incentives for additional litigation, perpetuate business uncertainty

and harm society's long-term welfare. Enough already."

The British legal system requires that the loser pay all court costs; this helps discourage frivolous lawsuits. If American antitrust law imposed a similar penalty, perhaps business rivals would spend more time competing and less time in antitrust litigation. And perhaps government antitrust bureaucrats would also curb their costly excesses.

See "It's Time to Quit," by Dominick Armentano (NATIONAL POST, 12/21/01), at <http://www.independent.org/tii/news/011221Armentano.html>

By the way, I think the right long term job for Attorney General Lockyer of California is City Attorney of Berkeley. He would be great for that City.

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